

Court of Appeals, State of Michigan

ORDER

Rebecca Hart v Benjamin Boys

Docket No. 305527

LC No. 04-027659

Kurtis T. Wilder
Presiding Judge

Christopher M. Murray

Karen M. Fort-Hood
Judges

The Court removes the delayed application for leave to appeal from abeyance, and in lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court orders that the August 30, 2010, order of the Lenawee County Circuit Court, which effectively changed custody of the parties' child by granting defendant "exclusive parenting time" and barring plaintiff any parenting time, is VACATED. The trial court cannot modify or change custody before conducting an evidentiary hearing or making findings of fact pursuant to MCL 722.23 and 722.27. See *Grew v Knox*, 265 Mich App 333, 336; 694 NW2d 772 (2005). The matter is REMANDED to the trial court to conduct an evidentiary hearing on defendant's motion to change custody and to make the necessary findings of fact. If the trial court grants defendant's motion to change custody, the trial court shall examine MCL 722.23 and MCL 722.27a and make findings of fact regarding plaintiff's parenting time. See *Rozek v Rozek*, 203 Mich App 193, 194-195; 511 NW2d 693 (1993) and *Booth v Booth*, 194 Mich App 284, 293; 486 NW2d 116 (1992). The trial court is further directed to conduct this hearing within 56 days from the Clerk's certification of this order. The status quo existing at the time of the entry of this order shall remain in place pending the hearing ordered by this Court, unless otherwise ordered by the trial court.

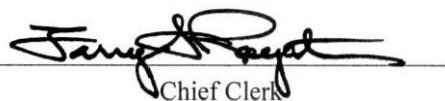
The Court retains no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

NOV 15 2011

Date


Chief Clerk